



3510-16-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Practitioner Conduct and Discipline

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on this proposed extension of an existing information collection.

DATES: Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted by any of the following methods:

- *Email:* InformationCollection@uspto.gov. Include “0651-0017 comment” in the subject line of the message.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Dahlia George, Office of Enrollment and Discipline, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Dahlia George, Office of Enrollment and Discipline, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–4097; or by email at Dahlia.George@uspto.gov with “0651-0017

comment” in the subject line. Additional information about this collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The Director of the United States Patent and Trademark Office has the authority to establish regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. §§ 2 and 32-33). The USPTO Rules of Professional Conduct at 37 CFR §§ 11.101-11.804 describe how agents, attorneys, or other practitioners representing applicants and other parties before the USPTO should conduct themselves professionally and outline their responsibilities for recordkeeping and reporting violations or complaints of misconduct to the USPTO, while the Investigations and Disciplinary Proceedings Rules (37 CFR §§11.19-11.60) dictate how the USPTO can discipline agents, attorneys, or other persons representing applicants and other parties before the USPTO. These sets of rules are collectively referred to here as “Part 11.”

This collection covers the various reporting and recordkeeping requirements set forth in Part 11 for all agents, attorneys, or other practitioners representing applicants and other parties before the USPTO. The Rules require a practitioner to maintain complete records of all funds, securities, and other properties of clients coming into his or her possession, and to render appropriate accounts to the client regarding the funds, securities, and other properties of clients coming into the practitioner’s possession, collectively known as “client property.” These recordkeeping requirements are necessary to maintain the integrity of client property. Each State Bar requires its

attorneys to perform similar recordkeeping and these Rules require patent agents to maintain similar recordkeeping for clients.

Part 11 also requires a practitioner to report knowledge of certain violations of the USPTO Rules of Professional Conduct to the USPTO. If a complaint or grievance is found to have merit, the USPTO will investigate and possibly prosecute such violations and provide the practitioner with the opportunity to respond to the complaint. The Director of the Office of Enrollment and Discipline (OED) may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO based on non-compliance with the USPTO Rules of Professional Conduct. Practitioners who have been excluded or suspended from practice before the USPTO, practitioners transferred to disability inactive status, and practitioners who have resigned must keep and maintain records of their steps to comply with the suspension or exclusion order, transfer to disability inactive status, or resignation should they seek reinstatement. These records may serve as the practitioner's proof of compliance with the order, transfer, resignation, and Rules.

The information collected, i.e., reports of alleged violations of the USPTO Rules of Professional Conduct, is used by the Director of OED to conduct investigations and prosecute violations, as appropriate.

II. Method of Collection

Electronically via email; by mail or hand delivery in paper form.

III. Data

OMB Number: 0651-0017.

IC Instruments: The individual instruments in this collection, as well as their associated forms, are listed in the table below.

Type of Review: Revision of an existing information collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 11,065 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public between 1 hour and 20 hours to complete a single item in this collection, depending on the instrument used, including the time to gather the necessary information, prepare the appropriate form or petition, and submit the completed request to the USPTO. The time per response, estimated annual responses, and estimated annual hour burden associated with each instrument in this collection are shown in the table below.

Estimated Total Annual Respondent Burden Hours: 12,225 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: \$3,606,500.00. The USPTO expects that agents will complete the Recordkeeping Maintenance & Disclosure item at an hourly wage rate of \$284 as published in the 2017 AIPLA *Report of the Economic Survey* and that practitioners will complete the Recordkeeping Maintenance Under Suspension or Exclusion from the USPTO item at an hourly rate of \$438 as published in the 2017 AIPLA *Report of the Economic Survey*. The USPTO further expects that a combination of individuals such as trademark applicants and applicants for patents as well as practitioners, including agents, will complete the Complaint/Violation Reporting, including grievances. USPTO estimates that this group has a blended hourly rate of

\$303; this blended rate is based on data from both the 2017 AIPLA *Report of the Economic Survey* and the 2017 Bureau of Labor Statistics (BLS) National Occupation Employment and Wage Estimates. The BLS wage estimate for scientists and engineers (occupation code 19-2099) is used for inventors and applicants. The blended rate is comprised 50 percent by the practitioner hourly rate of \$438, 25 percent by the agent hourly rate of \$284, and 25 percent by the rate for scientists and engineers of \$51.53. Using these hourly rates, the USPTO estimates \$3,606,500 per year for the total hourly costs associated with respondents.

IC Number	Information Collection Instrument	Estimated time for response (hours) (a)	Estimated Annual Responses (b)	Estimated annual burden hours (a) x (b) = (c)	Rate (\$/hr) (d)	Respondent Cost (c) x (d) = (e)
1	Recordkeeping Maintenance & Disclosure (includes advertisements, disclosure requirements relating to soliciting professional employment, notifications by non-attorney practitioner of inadvertently sent documents, and financial books and records such as trust accounts, fiduciary accounts, and operating accounts)	1	10,825	10,825	\$284	\$3,074,300
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO	20	40	800	\$438	\$350,400
3	Complaint/Violation Reporting	3	200	600	\$303	\$181,800
TOTAL		---	11,065	12,225	---	\$3,606,500

Estimated Total Annual (Non-hour) Respondent Cost Burden: \$1,244.35. There are no capital start-up or maintenance costs as well as no filing fees associated with this information collection. Any recordkeeping costs have been factored into the estimated hourly cost burden. There are, however, postage costs associated with this collection.

Customers may incur postage costs when submitting the items covered by this collection to the USPTO by mail. The USPTO expects that 20 percent of the Recordkeeping Maintenance & Disclosure item; 0 percent of the Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion item; and 25 percent of the Complaint/Violation Reporting item will be submitted electronically. The USPTO further expects that of the non-electronic submissions for this collection, 1 percent of each item's total responses will be submitted by hand delivery and the rest will be submitted by mail, for a total of 187 mailed submissions.

The average first-class USPS postage cost for a one-pound mailed submission in a flat-rate envelope and a three-pound mailed submission in a small flat-rate box are \$6.55 and \$7.05, respectively. 25 percent of the mailed Recordkeeping Maintenance & Disclosure items are expected to require the more expensive flat-rate box mailing option, while all other items are expected to be mailed using the flat-rate envelope. Using these numbers, the USPTO estimates that the postage costs for the mailed submissions in this collection will total \$1,244.35.

Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this collection, in the form of postage costs, is \$1,244.35 per year.

IV. Request for Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Marcie Lovett,

Director,

Records and Information Governance Division,

Office of the Chief Administrative Officer,

United States Patent and Trademark Office.

BILLING CODE 3510-16-P

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